



**UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS**

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CHICAGO, IL 60661-4544

**REGION V**  
ILLINOIS  
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MINNESOTA  
NORTH DAKOTA  
WISCONSIN

July 7, 2016

Dr. Steven Shirley  
President  
Minot State University  
500 University Avenue West  
Minot, North Dakota 58707

Re: OCR #05-14-2061

Dear President Shirley:

This letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint filed with OCR against Minot State University (University), alleging discrimination on the basis of sex.

The Complainant (Student A) alleges that the University discriminated against her on the basis of sex. The complaint raises whether the University fails to promptly and equitably respond to complaints, reports and/or incidents of sexual violence of which it had notice, including Student A's report in April 2013 of sexual assault committed against her by a University employee.<sup>1</sup>

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex. As a recipient of Federal financial assistance from the Department, the University is subject to Title IX.

During the complaint investigation, OCR reviewed documentation provided by the Complainant and the University, including relevant University policies and procedures, files related to reports of sexual harassment and sexual assault for academic years 2011-12, 2012-13, 2013-14, and 2014-15, conducted an on-site visit, and interviewed the Complainant, University students and University staff.

OCR found that at the outset of the investigation, the University had no designated Title IX coordinator. The University has since designated and trained a Title IX coordinator. OCR found that the University failed to respond promptly and equitably to student complaints of sexual harassment and sexual assault, including by failing to determine whether the students were subjected to a hostile environment. OCR also has determined that the University's policies and procedures and its notice of nondiscrimination are not compliant with Title IX.

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<sup>1</sup> The complaint was filed with OCR on December 19, 2013. OCR determined that the last alleged act of discrimination was the University's failure to respond to Student A's report of sexual assault by August 2013, as required. Accordingly, OCR determined that the complaint was timely filed.

On June 24, 2016, the University voluntarily entered into a resolution agreement (Agreement), which commits the University to take specific steps to address the identified violations and areas of concern.

This letter summarizes the applicable legal standards, the information gathered during the investigation, the reasons for OCR's determination, and the steps the University has agreed to take to resolve the investigation.

## **LEGAL AUTHORITY**

The regulation implementing Title IX, at 34 C.F.R. § 106.9, requires a recipient to implement specific and continuing steps to notify all applicants for admission and employment, students and parents, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in its education programs or activities, and that it is required by Title IX not to discriminate in such a manner. The notice must also state that questions regarding Title IX may be referred to the recipient's Title IX coordinator or to OCR.

The Title IX implementing regulation, at 34 C.F.R. § 106.8(a), requires that a recipient designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under that law. The recipient is further required, by the Title IX implementing regulation at 34 C.F.R. § 106.8(a), to notify all students and employees of the name (or title), office address, and telephone number of the designated employee(s).

The Title IX regulation at 34 C.F.R. § 106.31 provides generally that, except as provided elsewhere in the regulation, no person shall on the basis of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination in education programs or activities operated by recipients of Federal financial assistance. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the recipient's program or activity.

OCR considers a variety of related factors to determine if a sexually hostile environment has been created and considers the conduct in question from both an objective and a subjective perspective. Factors examined include the degree to which the misconduct affected one or more students' education; the type, frequency, and duration of the misconduct; the identity of and

relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment, the size of the school, location of the incidents, and the context in which they occurred; and other incidents at the school. The more severe the conduct, the less the need to show a repetitive series of incidents; this is particularly true if the harassment is physical. A single or isolated incident of sexual harassment may, if sufficiently severe, create a hostile environment. For example, a single instance of rape is sufficiently severe to create a hostile environment.

Once a recipient knows or reasonably should know of possible sexual harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred; and if the conduct occurred, whether a hostile environment existed for the complainant(s) and for others. If an investigation reveals that sexual harassment created a hostile environment, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, prevent the harassment from recurring and, as appropriate, remedy its effects. These duties are a recipient's responsibility, regardless of whether a student has complained, asked the recipient to take action, or identified the harassment as a form of discrimination. A recipient has notice of harassment if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment. If a recipient delays responding to allegations of sexual harassment or responds inappropriately, the recipient's own action may subject the student to a hostile environment. If it does, the recipient will be required to remedy the effects of both the initial sexual harassment and the effects of the recipient's failure to respond promptly and appropriately. A recipient's obligation to respond appropriately to sexual harassment complaints is the same irrespective of the sex or sexes of the parties involved.

Sexual harassment of a student by a faculty member or other employee can also violate Title IX. A recipient is responsible under the Title IX regulations for the nondiscriminatory provision of aid, benefits, and services to students. Recipients generally provide aid, benefits, and services to students through the responsibilities they give to employees. If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out the employee's responsibilities either conditions an educational decision or benefit on a student's submission to unwelcome sexual conduct, or engages in sexual harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program on the basis of sex, the recipient is responsible for the discriminatory conduct and for remedying any effects of the harassment on the complainant, as well as for ending the harassment and preventing its recurrence. This is true whether or not the recipient has notice of the harassment. The Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX, including sexual harassment and sexual violence. Title IX does not require a recipient to provide separate grievance procedures for sexual harassment complaints, including sexual violence complaints. A recipient may use student

disciplinary or other separate procedures for these complaints; however, any procedures used to adjudicate complaints of sexual harassment or sexual assault, including disciplinary proceedings, must afford the complainant<sup>2</sup> and the accused a prompt and equitable resolution.

## **BACKGROUND**

The University, a regional public university in northwest North Dakota, enrolled approximately 3,064 undergraduate students (61.2% female, 38.8% male) and 284 graduate students (64.4% female, 35.6% male) University-wide for the 2015-16 academic year.<sup>3</sup>

As required annually pursuant to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092 (Clery Act), for the past four reporting years (2011, 2012, 2013, 2014), the University reported a total of one sex offense. The University has yet to report crime data for 2015.

## **FINDINGS OF FACT**

### **A. Nondiscrimination Notice**

The University posted a nondiscrimination notice on its “Keep U Safe” webpage, but not its Title IX or main web pages.<sup>4</sup> In addition, neither the University’s Student Handbook nor its Admissions webpage contains a nondiscrimination statement.<sup>5</sup> Further, the notice of nondiscrimination located on the Keep U Safe webpage is contained on a subpage titled “Overview.” The Overview subpage does not provide notice that inquiries regarding Title IX and its implementing regulation may be referred to the Title IX Coordinator or to OCR; instead that information is contained on a separate subpage titled “Who to Contact.”

### **B. Title IX Coordinator**

When OCR initiated the investigation on February 26, 2014, the University had no designated Title IX coordinator. On March 21, 2014, the University named its Human Resources Director (HR Director) as the Title IX Coordinator (Title IX Coordinator) and identified three deputy Title IX Coordinators: the Vice President of Student Affairs (VPSA), the Assistant Athletic Director for Compliance (AAD), and the Superintendent of Campus Safety and Security (Superintendent). The VPSA serves as the Deputy Title IX Coordinator for Students, the AAD serves as the Deputy

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<sup>2</sup> The term “complainant” as used throughout this letter refers to an individual who is the subject of alleged sexual harassment, sexual assault or other forms of sexual violence.

<sup>3</sup> <http://www.minotstateu.edu/instplan/pdf/minotstateuniversityenrollmenthighlight.pdf>

<sup>4</sup> <http://www.minotstateu.edu/keepusafe/>; <http://www.minotstateu.edu/>; <http://www.minotstateu.edu/title9/>

<sup>5</sup> [http://www.minotstateu.edu/student\\_handbook.pdf](http://www.minotstateu.edu/student_handbook.pdf); <http://www.minotstateu.edu/enroll/apply.shtml>

Title IX Coordinator for Athletics, and the Interim Superintendent of Campus Security served as the Deputy Title IX Coordinator for Security.<sup>6</sup>

In addition, prior to the start of the 2014-15 academic year, the University appointed the Project Coordinator for its “Keep U Safe” program, a program funded by a grant from the Rural Crime and Justice Center to educate students about sexual violence, as the Deputy Title IX Coordinator for Prevention and Training.<sup>7</sup> Effective October 1, 2015, the University named the former Deputy Coordinator for Prevention and Training as the Title IX Coordinator. The former Title IX Coordinator became the Deputy Title IX Coordinator for Human Resources. The University did not appoint a new Deputy Title IX Coordinator for Prevention and Training. Appropriate contact information for the University’s current Title IX Coordinator and the Deputy Title IX Coordinators can be found on the University’s website.<sup>8</sup>

The University’s Title IX webpage states that the Title IX Coordinator “oversees all matters related to sexual discrimination against students and employees of the [University]” and that “deputy coordinators are also appointed to assist with specialized areas and in the oversight of Title IX matters,” including the development of policies and procedures, the development of training and orientation materials for students and employees, the oversight of investigations of complaints of sexual harassment and other forms of sex discrimination, the review of complaints to identify patterns or systemic problems, the protection and safety of those reporting violations, and compliance with the University’s obligations under the Clery Act. The University told OCR that the deputy coordinators are assigned to assist with specialized areas and in the oversight of Title IX matters. The University’s Title IX Coordinator at the time, who reported to the Vice President of Administration and Finance, told OCR that when he served as Title IX Coordinator, he reviewed each complaint of sexual harassment or sexual assault and generally delegated investigatory responsibilities to the Deputy Title IX Coordinators and employees designated as Title IX investigators.

### **C. University Policies and Procedures**

At the start of OCR’s investigation, the University had four policies that addressed sexual harassment and sexual assault:

1. H.R. Policy 1.1 (“Harassment Policy”)
2. Policy on Harassment (This policy is an abridged version of the Harassment Policy.)
3. Policy on Sexual Assault

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<sup>6</sup> The Director of Campus Safety and Security now serves as the University’s Deputy Title IX Coordinator for Security.

<sup>7</sup> The Keep U Safe Program is described below in Section E.2

<sup>8</sup> <http://www.minotstateu.edu/title9/>

#### 4. Student Conduct Policy

On May 1, 2014, the University implemented a Sexual Misconduct and Title IX Compliance Policy (Title IX Policy).<sup>9</sup>

As a result, the University currently has five policies that address sexual assault and sexual harassment:

1. Title IX Policy
2. HR Policy 1.1 (“Harassment Policy”)
3. Policy on Harassment (This policy is an abridged version of the Harassment Policy.)
4. Policy on Sexual Assault
5. Student Conduct Policy

The Title IX Policy is available only on the University’s Title IX website. The Harassment Policy is and has been published in the Human Resource Policy/Procedures Manual and on the University’s website since 2013-14. The Policy on Harassment, Policy on Sexual Assault and Student Conduct Policy are also published in the Student Handbook, which is also available on the University’s website, and has been available there since 2013-14.

As noted in greater detail below, the University’s policies contain overlapping provisions for addressing the same conduct, do not clearly specify in every instance the entity and individuals within the University who are charged with responding to reports of sexual harassment and sexual assault as well as the procedures those individuals will follow in responding, and do not ensure that the Title IX Coordinator is informed of all reports of sexual harassment and sexual assault to enable her to oversee the University’s response to Title IX reports and complaints and address any patterns or systemic problems revealed by such reports and complaints.

##### 1. Title IX Policy

The Title IX Policy identifies the Title IX Coordinator and Deputy Title IX Coordinators, provides their contact information, including their address, email address and telephone number, and describes their duties, including the oversight of investigations of what the University terms “sexual discrimination,” violence, harassment and other forms of sexual misconduct and the provision of interim measures to protect the safety of those reporting violations. The Title IX Policy includes an assurance that the University will take action to stop sexual harassment and sexual assault, remedy its effects, and prevent its recurrence. It also includes an assurance that the University will conduct impartial investigations, separate from law enforcement investigations, of all reports or notices of sexual misconduct. Originally, the Title IX Policy did

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<sup>9</sup> [www.minotstateu.edu/title9](http://www.minotstateu.edu/title9)

not identify the steps the University would take to prevent retaliation against students who file complaints of sexual harassment or sexual assault, either on their own behalf or on behalf of others, or against those who provide information as a witness during the University's investigation or adjudication of a complaint of sexual harassment or sexual assault. However, the revised Title IX Policy defines retaliation and states that retaliation "will be treated as another possible instance of harassment or discrimination" and that the University is "prepared to take appropriate steps to protect individuals who fear that they may have been subject to retaliation."

The Title IX Policy also includes a description of the University's investigatory and hearing process, an explanation of how individuals can file Title IX reports or complaints, and links to both a printable complaint form and a secure online complaint form. The Title IX Policy informs students that the University's Title IX investigation and hearing procedures are independent of criminal proceedings, though it does not explicitly state that individuals can utilize both the University and the criminal process simultaneously.

The Title IX Policy defines sexual misconduct as "any non-consensual behavior of a sexual nature that is committed by force, intimidation, or is otherwise unwelcome that is sufficiently severe, persistent, or pervasive so as to limit a student's ability to participate in or benefit from a Minot State University program or activity." The Title IX Policy states that a single incident of sexual misconduct may be sufficient to limit a student's ability to participate in or benefit from University programs or activities. The Title IX Policy also defines consent, sexual assault, sexual discrimination, sexual exploitation, sexual harassment, and sexual misconduct.

The Title IX Policy defines sexual assault, a form of sexual misconduct, as "any sexual act between two or more people to which one person does not or cannot consent." The Policy identifies sexual acts ranging from sexual intercourse, other forms of sexual penetration, to sexual touching of intimate body parts. The Policy defines consent as "words or actions showing a clear, knowing and voluntary agreement to engage in [a] mutually agreed upon sexual act" and notes that consent may not be inferred from silence, passivity or lack of active resistance alone or a current or previous dating or sexual relationship. The Title IX Policy also contains a definition of sexual harassment that comports with Title IX.

The Title IX Policy encourages students to report incidents of or information related to sexual harassment or sexual assault to the University and notes that if criminal activity is involved, students are encouraged to contact the Minot Police Department (MPD) or Campus Security. The Policy states that University employees who become aware of a complaint or violation of the policy shall report the complaint or violation to the Title IX Coordinator or Deputy Title IX Coordinator if the employee "ha[s] the authority to take action on the complaint or violation." However, the Policy does not explain which employees "have the authority to take action on the complaint or violation." Moreover, the Title IX Policy does not explain that the policy applies to conduct by third parties or that the University will process all complaints of sexual harassment

and sexual assault regardless of whether the conduct occurred off-campus to determine whether the conduct occurred in the context of an educational program or had continuing effects on campus.

In addition, the Title IX Policy makes clear that the University will accept anonymous complaints, but that its ability to investigate such complaints may be limited. Further, the revised Title IX Policy explains that the University will attempt to protect the privacy and confidentiality of persons who report sexual harassment and sexual assault, but advises that it cannot ensure confidentiality at all times, noting that it “must weigh the request for confidentiality against its obligation to protect the safety and security of the entire campus.” The revised Title IX Policy does not explain who makes the determination whether to honor a request for confidentiality. The revised Title IX Policy provides contact information for a local Domestic Violence Crisis Center (DVCC), which includes a rape-crisis hotline, and the University counselor for individuals who wish to make confidential reports.

The Title IX Policy contains both a formal and informal resolution process and states that the informal process is voluntary, may be terminated at any time, and may not be used for complaints involving sexual assault. Under the informal process, the Title IX Coordinator assigns a University official (e.g., a Title IX team<sup>10</sup> member, the accused’s supervisor or advisor) to “provide the complainant with a forum to confront the accused; to express how the alleged behavior has impacted them and those close to them; and to communicate to the accused and the University how this behavior needs to be addressed.” The complainant, but not the accused student, may opt to use and may opt to terminate the informal process at any time. Pursuant to the informal policy, the accused may acknowledge involvement in the sexual misconduct and in doing so, agree to a sanction. The accused student has no appeal recourse after acknowledging involvement. If the accused does not acknowledge involvement and agree to a sanction, the informal process permits the University official to nonetheless impose a sanction based on the information gathered during the informal process, and the accused student’s only recourse is to appeal that determination and sanction to the Title IX Coordinator.

The Title IX Policy states that for the formal process, the University will follow the procedure outlined in the Student Handbook for complaints of sexual harassment or sexual assault where the alleged perpetrator is a student<sup>11</sup> and HR Policy 1.1 where the alleged perpetrator is an employee. The Title IX Policy and the Student Handbook do not state timeframes for major steps of the investigation and adjudication process.

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<sup>10</sup> OCR refers to the University’s Title IX Coordinator, Deputy Title IX Coordinators and Title IX Investigators, collectively, as the Title IX team.

<sup>11</sup> Although the Title IX Policy does not specifically name the procedure in the Student Handbook to which it refers, the only such procedure is the Student Conduct Policy, described below.



The Title IX Policy provides that all determinations concerning sexual harassment and sexual assault complaints will be based upon a preponderance of the evidence. It also provides that the complainant and accused have equal opportunities to present witnesses and other evidence, similar and timely access to information used during the process, and a right to use a support person (with equal restrictions on the support person's participation during the process). The Title IX Policy provides that the complainant and accused are to be informed of the outcome of the investigation or hearing,<sup>12</sup> and that both parties have the right to appeal the determination. Finally, the Title IX Policy identifies a range of potential remedies and sanctions for a person found to have engaged in sexual harassment or sexual assault.

The Title IX Policy also identifies a non-exhaustive list of potential protective measures that are available to students who report sexual harassment or sexual assault when “warranted by the circumstances.” The list includes: (1) escort services; (2) no contact orders; (3) housing assistance, including relocating the accused and/or complainant; (4) alteration of class schedules of the accused and/or complainant; (5) counseling services; and (6) academic support services. The Title IX Policy notes that violation of a protective measure may be considered as “grounds for additional complaints of sexual misconduct or as retaliation for the ongoing investigation of sexual misconduct.”

#### 1. The Policy on Sexual Assault and the Policy on Harassment

As noted previously, the Student Handbook, which is published online, does not contain the University's Title IX Policy. Instead, it contains the Policies on Sexual Assault and the Policy on Harassment. These policies do not explain how they interact or supplement each other. The Policy on Sexual Assault contains substantially similar definitions of “sexual assault,” “sexual harassment,” and “consent” as the Title IX Policy.

However, neither the Policy on Sexual Assault nor the Policy on Harassment references the University's Title IX Policy or the complaint filing, investigation, and hearing processes contained therein. In addition, neither policy identifies the range of potential remedies and sanctions for a person found to have engaged in sexual harassment or sexual assault. The Policy on Sexual Assault states that the University will conduct an investigation and disciplinary proceedings consistent with the Student Conduct Policy and provide interim measures for the complainant. Further the Policy on Sexual Assault and the Policy on Harassment do not identify the Title IX Coordinator; instead the Policy on Sexual Assault includes numerous contacts for reporting sexual harassment or sexual assault, including the MPD, the VPSA, residence hall staff, the Student Health and Development Center, the DVCC, and other third-party advocacy or assistance groups. The Policy on Harassment states that employees or students concerned about violations of the policy may request assistance from the University's Human Resources Office

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<sup>12</sup> The Title IX Policy does not mandate that this notice be provided in writing.

and the Student Health and Development Center. It states further that the University's affirmative action plan and equal opportunity complaint procedure shall be available for any person who wishes to allege a violation of the policy, but does not provide further information (such as links or contact information) about those policies.

## 2. Student Conduct Policy

The Student Conduct Policy, which is contained in the University's Student Handbook, sets forth the procedures to be followed in disciplinary hearings involving complaints of sexual harassment or sexual assault where the accused party is a student. The Title IX Policy states that the University will follow the procedure outlined in the "Student Handbook," which contains a section entitled "Student Conduct Policy," to adjudicate complaints of sexual harassment or sexual assault. However, the Title IX Policy does not specify the circumstances under which the Title IX team will convene a disciplinary hearing following an investigation or whether a complainant may request such a hearing following an investigation.

Further, although the Title IX Policy directs the Title IX Coordinator to conduct an investigation of a complaint of sexual harassment or sexual assault, the Student Conduct Policy directs the VPSA to conduct an investigation of the allegations. The Student Conduct Policy does not specify the time-frame for the VPSA's investigation. The policy states that after the investigation, the VPSA may: (1) take no action; (2) take administrative action to counsel, advise, or admonish the student; or (3) initiate hearing proceedings. The policy does not identify criteria under which the VPSA should determine which action to take.

The Student Conduct Policy grants the VPSA the discretion to hold an administrative hearing or to refer the case to the Student Welfare and University Affairs Committee (SWUAC).<sup>13</sup> The policy provides that the accused, but not the complainant, may indicate a preference for the type of hearing desired and states that the determination as to which type of hearing rests with the VPSA. The Student Conduct Policy further requires the VPSA to provide notice to the complainant and accused of: (1) the time, place and nature of the hearing; (2) the particular section of the University's rules or regulations involved; (3) a short and plain statement of the matters asserted; and (4) a statement of the student's rights. The policy does not specify that this notice be in writing.<sup>14</sup> Further, the policy does not designate timeframes for the major stages of the investigation nor does it require the University to provide periodic updates about the investigation to the parties.

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<sup>13</sup> The Chair of the SWUAC when OCR initiated the investigation was the Student Center Director. Additionally, the SWUAC includes faculty members, the University counselor, and student representatives.

<sup>14</sup> As noted in more detail below, OCR's file review further indicates that the VPSA did not always provide the required notice to students, including both complainants and accused students.

The Student Conduct Policy describes the following hearing procedures, which apply to both hearings held by the VPSA and by the SWUAC:

- (1) hearings shall be conducted informally;
- (2) each party has the opportunity to respond to the allegation and present evidence and argument on the issues involved;
- (3) the burden of proof rests on the complaining party;
- (4) the parties may resolve the proceedings by mutual agreement, unless precluded by law;
- (5) each party may bring an advisor of his or her choosing to the hearing, who may participate only at the pleasure of the chair of the SWUAC or the VPSA;
- (6) the person conducting the hearing shall issue written findings of fact and, if a violation is found, impose sanctions, that include fines, parental notification, warnings, probation, eviction, suspension, or expulsion.

The Student Conduct Policy also grants the following rights specifically to the accused, and not the complaining, party:

- (1) written notice of the charges in sufficient time to ensure an adequate opportunity to prepare for the hearing;
- (2) opportunity to present information on his or her behalf, including written and oral statements and physical exhibits;
- (3) opportunity to hear all information presented and question all who present it;
- (4) opportunity to be advised by an advisor or attorney while being questioned;
- (5) timely written decision of the hearing findings; and
- (6) to appeal decisions involving the imposition of specified restrictions, probation, suspension, or expulsion.

The Student Conduct Policy contains no written provision for a virtual appearance by either party.

Finally, the Student Conduct Policy describes the University's appeals procedures. The policy provides that when the hearing is conducted administratively by the VPSA, all appeals where the VPSA imposes sanctions are heard by the SWUAC. The policy further provides that when the hearing is conducted by the SWUAC, appeals where the SWUAC imposes sanctions are heard by the Student Rights Committee (SRC).<sup>15</sup> The policy provides that students who are "adversely affected"<sup>16</sup> by the hearing decision may appeal, and that the appeal must be filed in writing within 96 hours after the decision was rendered, excluding weekends, holidays, or any other day

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<sup>15</sup> The SRC consists of the VPSA, VPAA, Director of Financial Aid, three faculty members, and three student representatives. In addition, the Chair of the SRC, who serves in a non-voting capacity, is the Registrar.

<sup>16</sup> The Student Conduct Policy does not clearly identify the individual who might be "adversely affected" by a decision under the policy.

on which the Office of Student Affairs is not open for at least four hours. The Student Conduct Policy provides that the filing of an appeal shall stay all sanctions except those involving the removal of a student from the campus or campus housing to ensure the safety of other members of the University community.

4. HR Policy 1.1: “Sexual Harassment Policy”<sup>17</sup>

HR Policy 1.1 states that it applies to complaints of harassment by and against faculty, staff, students, and persons doing business with or visiting the University and prohibits sexual harassment, but does not reference the Title IX Policy or the Title IX Coordinator. HR Policy 1.1 defines sexual harassment as:

unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment or education requirement; (b) submission to, or rejection of such conduct by an individual is used as the basis for an employment decision, educational decision (grades, etc.) affecting such individual; (c) such conduct has the purpose or effect of substantially interfering with an individual’s work or learning performance or creating an intimidating, demeaning, or hostile offensive working/classroom environment.

HR Policy 1.1 contains separate reporting procedures for students and faculty/staff. It informs students that all complaints alleging harassment may be reported to the HR Director or the Vice President for Administration and Finance (VPAF). It also suggests that faculty and staff may solve problems at the lowest level by filing complaints regarding employees’ conduct with the employee’s supervisor, complaints regarding students’ conduct with the department chair, dean, Vice President of Academic Affairs (VPAA), or VPSA, and complaints regarding visitors with the faculty or staff’s supervisor or “the vice president with responsibility for that environment.” HR Policy 1.1 allows for formal complaints on the University’s “Harassment Complaint Form,” or informal complaints made verbally or through email or letter. The policy informs complainants that all complaints will be “acted upon” and that a request for confidentiality cannot be guaranteed. The policy directs anyone who receives a complaint to contact the HR Director and directs the HR Director or his or her designee to conduct an investigation within 30 days, or within 120 days if there are “particular difficulties or unforeseen circumstances.” The policy does not require the investigator to provide periodic updates to the parties. The policy requires the investigator to complete a written “Report of Investigation” with a recommended finding of whether the policy was violated, which should be provided to the complainant and the accused. The policy notes that even if the investigator recommends disciplinary action in the

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<sup>17</sup> [http://www.minotstateu.edu/hr/manual/1\\_1\\_harassment.pdf](http://www.minotstateu.edu/hr/manual/1_1_harassment.pdf)

“Report of Investigation,” the “appropriate administrator” who will be determining whether to discipline the accused individual is not bound by the recommendation. The administrator may discuss the report with the investigator and others in the supervisory chain to make a determination concerning the recommendation, but the policy does not establish criteria or standards for when a disciplining administrator may disregard an investigator’s recommendations. Finally, HR Policy 1.1 contains a non-retaliation provision, and allows complainants to appeal the recommendation if the investigation determines that the accused did not violate the policy. HR Policy 1.1 allows faculty and staff to appeal disciplinary actions through the Faculty Rights Committee or Staff Personnel Board.

#### **D. Student Conduct Sexual Harassment Investigation and Hearing Process**

According to information contained in the University’s policies when OCR initiated this investigation, the University’s HR Director or the VPSA conducted investigations into reports of sexual harassment and sexual assault. The University’s Policy on Sexual Assault provided students contact information to report incidents of sexual harassment or sexual assault, including contact information for the MPD, the VPSA, residence hall staff, the Student Health and Development Center, the DVCC, and other third-party advocacy or assistance groups. The University’s Harassment Policy directed students and staff to report incidents of sexual harassment to the HR Director.

In addition, the University did not have a Title IX Coordinator responsible for coordinating the University’s efforts to comply with and carry out its responsibilities under Title IX. The evidence showed that the investigation of sexual harassment reports did not follow a prescribed protocol and, as described below, that affected individuals were denied a prompt and equitable response in most cases.

Interviews with University officials revealed that investigations into sexual harassment and sexual assault reports varied and that there was not a protocol for investigations. The HR Director and VPSA told OCR that when they investigated reports of sexual harassment or sexual assault they interviewed both the complainant and the accused and made a record of the investigatory steps taken. The VPSA told OCR that the University utilized different hearing protocols for adjudicating allegations of sexual harassment or sexual assault. He described an administrative hearing over which he presided and a hearing before the SWUAC, a committee that includes faculty, staff, and students, and stated that the accused, not the complaining student, could choose whether to have an allegation of misconduct determined by an administrative hearing before the VPSA or before the SWUAC.

In addition to the procedures described in the policies, the VPSA told OCR that students could bring an advisor of their choice to a hearing. He also told OCR that he informed complainants and accused students that they were permitted to review the investigatory file in his office prior

to the hearing; however, this procedure was not published to the University community anywhere. The VPSA stated that parties were allowed to question each other only at the discretion of the chair of the hearing and that questions about past sexual history were permitted only if they were relevant to the particular case. Finally, the VPSA stated that the University applied the preponderance of the evidence standard for administrative hearings before the VPSA and the SWUAC. The VPSA stated that the hearing chair prepared a formal letter summarizing the University's decision.

The Chair of the SWUAC is the University's Student Center Director (SWUAC Chair). The SWUAC Chair told OCR that his day-to-day job responsibilities include creating dining plans and working with food vendors, issuing ID cards to students, organizing homecoming festivities, advising student government and other student associations, and supervising the Student Center custodial staff. He stated that he became the Chair of the SWUAC sometime in 2011, after the previous chair left the University. The SWUAC Chair acknowledged that neither he nor other members of the SWUAC had received training on how to adjudicate allegations of sexual harassment or sexual assault.

The University's previous and current policies and procedures do not set forth any guidelines for determining appropriate sanctions when a hearing committee determines that a student or University employee has engaged in sexual harassment or sexual assault. The SWUAC Chair also told OCR that the complainant is informed of the committee's decision verbally and that only the accused receives written notice of the decision.

Parties have the right to appeal an adverse decision to the Student Rights Committee (SRC); however in the one report of sexual harassment for which the University conducted a hearing, only the respondents received notice of the right to appeal to the SRC.

Prior to OCR's initiation of this investigation, the University had no policy regarding protecting affected students' confidentiality; the Policy on Sexual Assault generally instructed the VPSA to "take steps to protect confidentiality" in working with the complainant. The Title IX Policy, which is published only on the University's web page, states in a section regarding third-party or anonymous reports of sexual violence that the University advises that "All reports of sexual assault are treated with respect to the privacy of the involved individuals, to the extent permitted by law. Incidents are reported to appropriate departments and agencies in consideration of safety concerns and investigative needs."

The University informs students who desire confidentiality that they may discuss an incident of sexual harassment or sexual assault confidentially with the DVCC and the University's Counselor, whose contact information is provided in the Title IX Policy.

### **E. Coordination with Law Enforcement**

At the outset of OCR's investigation, the University did not have a written protocol coordinating investigator responsibility between the Title IX team and University's Campus Security or the MPD. In addition, the University did not have a memorandum of understanding (MOU) with the MPD. As explained in greater detail below, each of the four complaints of sexual harassment or sexual assault that were filed prior to implementation of the Title IX Policy and reviewed by OCR, were reported to a campus security officer. However, only one of those reports led to a Title IX investigation. OCR did not find any referrals of reports of sexual violence from the MPD to the University prior to an April 8, 2015 referral of an alleged sexual assault in a University dormitory.

On April 15, 2016, the University entered into an MOU with the MPD and provided a copy to OCR. The goals of the MOU are to: (1) ensure that crimes committed on campus are promptly reported and investigated; (2) enhance communication and cooperation between the University and the MPD; and (3) enhance the University's ability to alert the University community about crimes that pose a serious or ongoing threat to public safety. The MOU states that the MPD will make efforts to share information in order for the University to provide a safe and violence free environment and reiterates the University's obligations under Title IX, specifically its obligation to conduct concurrent investigations even where the MPD conducts its own investigation. The MOU did not specify under what, if any, conditions the University would temporarily suspend a Title IX investigation during the law enforcement investigation.

### **F. Response to Sexual Harassment and Sexual Assault Reports**

#### **Student A's Report**

On April 8, 2013, Student A's attorney submitted a complaint by way of letter to the University's VPAA alleging that Professor A sexually harassed her when he solicited sex from her. The letter complaint alleged that Professor A implied that without his assistance Student A would be unable to achieve her professional goals. The University did not immediately respond to the complaint, and on May 6, 2013, Student A's attorney wrote to the University to inform it that: (a) Student A had received no response to the April 8, 2013 complaint; and (b) Professor A and others on his behalf had contacted Student A through text and email to discourage her from pursuing any complaint against him. The May 6, 2013 letter requested that the University take steps to stop Professor A, and others on his behalf, from contacting Student A. On May 15, 2013, the University responded to the May 6, 2013 letter, stating that it had not received the April 8, 2013 complaint and that it had begun an investigation into Student A's complaint based on the attorney's correspondence of May 6, 2013. The University did not initiate a no-contact order and the May 15, 2013 letter did not state that it took any steps to prohibit Professor A or others on his

behalf from further contacting Student A. Student A reported no further contact from Professor A or others on his behalf after May 6, 2013.

On May 28, 2013, the University sent a letter to Student A's attorney requesting additional information about Student A's allegation. On June 24, 2013, Student A's attorney submitted a detailed timeline, prepared by Student A, outlining her allegations. In the timeline, Student A described numerous alleged instances of sexual harassment and sexual assault that began in June 2010 and continued through December 2012.

On July 2, 2013, Professor A's Department Chair (Chair) submitted documents to the HR Director that he believed were relevant to Student A's allegation. The documents indicated that the Chair had expressed concern on several occasions about Professor A's interactions with his students, noting the impropriety of traveling alone with a student, of having late night meetings in his office with students, and of arranging his office furniture in a manner that blocked the view from the hallway.

Throughout June and July 2013, University officials, including Counsel, the former President, the VPAF, and the HR Director, exchanged emails about Student A's allegations. Several emails detailed the University's difficulty contacting Student A's attorney, who repeatedly did not respond to requests for information or requests to schedule a time for the University to interview Student A. On June 28, 2013, the former President wrote to Counsel, the HR Director, the VPAF, and the VPAA, and the Interim Chancellor of the NDUS in which he expressed concern that the University had not taken more steps in response to Student A's allegations.

A few emails were exchanged in August 2013 between Counsel for the University and Student A's attorney requesting evidence, in the form of photos or texts, supporting her allegations.<sup>18</sup> Ultimately, Professor A submitted a formal resignation to the University on August 5, 2013, which the University accepted.

On August 14, 2013, a different attorney from the same firm notified the University that she would be the principal contact for Student A. However, there was little interaction between the University and Student A's second attorney until late October 2013, when the second attorney requested that the University remove Student A's photograph from certain promotional materials. The University granted Student A's request.

On December 9, 2013, Counsel for the University wrote to Student A's original attorney (who was again the principal contact for Student A) requesting input from Student A and also

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<sup>18</sup> Although Student A's attorney represented that he would provide these evidentiary materials to the University, he did not do so. Student A told OCR that she was unable to retrieve texts and photos because prior to the time she filed the complaint with the University, Professor A deleted the texts and photos from her phone.



requesting permission to contact Student A's parents, who had been writing letters to various agencies criticizing the University's handling of Student A's complaint. Student A's attorney did not respond to these emails and shortly thereafter Student A filed the subject complaint with OCR in which she alleged that Professor A sexually assaulted her.<sup>19</sup>

As of the date of the University's last document production to OCR, the University had not issued written notice to Student A or Professor A of findings regarding the April 2013 complaint that Professor A sexually assaulted Student A between June 2010 and December 2012.

OCR interviewed Student A, the HR Director, the Chair, three Department faculty, the VPAA, the former President, and several former Department students regarding Student A's allegation that Professor A sexually harassed and sexually assaulted her and the University's response to her complaint. All XXX department employees OCR interviewed denied that they were aware of Professor A's conduct prior to Student A's April 8, 2013 complaint to the University. Similarly, none of the former students OCR interviewed stated that they were aware that Professor A had engaged in sexual harassment of any student. The University asserted that its ability to conduct an investigation into Student A's allegations was limited by Student A's attorney's lack of communication with the University.

### Conclusion

Based on the above, OCR determined that the University did not promptly and equitably respond to Student A's report that Professor A sexually harassed and sexually assaulted her between June 2010 and May 2012, when she graduated from the University.

Student A reported Professor A's alleged sexual harassment and assault to the University on April 8, 2013. The University did not respond and asserted it received no notice of Student A's report until May 6, 2013, when Student A reported the alleged sexual harassment and sexual assault a second time. After it received notice of Student A's complaint, the University did not offer to provide any interim services to Student A, such as issuing a no-contact order or offering Student A counseling services.

On June 24, 2013, Student A provided a detailed narrative of her allegations in response to the University's request of May 28, 2013, describing specific incidents of sexual harassment and sexual assault. On July 2, 2013, the Chair provided the HR Director a series of documents related to Student A's allegations. Although the University attempted but was unable to obtain additional information from Student A, there is no evidence in the file that the University interviewed Professor A, XXX department faculty and XXX department students about Student

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<sup>19</sup> When OCR interviewed Student A in January 2014, she told OCR that she was no longer represented by an attorney.

A's allegations.

The University did not adjudicate Student A's allegation utilizing hearing procedures pursuant to University policies. The University also did not determine whether Student A was subjected to a sexually hostile environment or issue a written notice of its findings to Student A. The University did not determine whether their failure to provide a prompt and equitable response created a hostile environment for other students on the basis of sex, and whether appropriate remedies were necessary to prevent recurrence. Instead, when Professor A resigned in August 2013, the University halted its investigation.

OCR determined that the University did not provide a prompt and equitable response to Student A's report in that it did not promptly complete an investigation of the complaint, did not offer Student A interim services, and did not make a determination as to whether Student A was subjected to a hostile environment and take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment, and prevent further harassment from recurring.

Reports filed prior to May 1, 2014, the effective date of the Title IX Policy

In addition to Student A's report, the University produced four reports of sexual harassment that it received prior to its adoption of the Title IX Policy. In each of the four reports, the student reported the incident to a campus security officer who recorded the report on a security incident report. The University conducted an investigation beyond the preliminary information gathered by Campus Security in only one of the four reports.

The three reports in which, based on the content of the files, the University conducted no investigation beyond the preliminary information gathered by campus security:

- Although the University placed an accused student on probation for the remainder of the 2012-13 academic year after determining that he had sexually harassed a female student based on limited information contained in the campus security report, it failed to provide written notice of its determination to the complainant or inform her of how to appeal the sanction (it did inform the accused how to appeal the sanction). OCR determined, based on its review of the evidence in the file, that the University's response to this report was prompt in that it issued a determination within 10 days of receiving the report from Campus Security, but not equitable because there is no record in the University's file that it conducted any investigation beyond the Campus Security report prior to imposing a sanction on the accused or that the University assessed whether a hostile environment existed for the student and, if so, remedied its effects. (Reported on October 9, 2012).

- Regarding an anonymous report of “indecent exposure,” OCR was unable to determine, based on its review of the evidence in the file, whether the University’s response to this report was equitable because documentation contained in the University’s file does not establish whether the University attempted to identify the reporter or refer her to resources that might remedy the effect of the indecent exposure. (Reported on February 27, 2013).
- After the MPD arrested an individual suspected of having solicited sex from six different University students, each of whom he approached while driving XXX on campus, the University did not document whether the suspect was a student at the University, and if so, why the University did not pursue discipline against him through the judicial process, and whether the University informed the six reporting students that resources were available to them. OCR determined, based on its review of the evidence in the file, that the University’s response to this report was prompt in that within one week of learning of the harassing conduct, the University closed the case when it learned that MPD had arrested a suspect, but not equitable because there is no record in the University’s file that it assessed whether a hostile environment existed for the students and, if so, remedied its effect on each of them. (Reported on November 26, 2013).

### *Student B’s Report*

The University investigated Student B’s January 15, 2012 report that Students C and D repeatedly sexually harassed her (uttering repeated slurs, stalking and menacing Student B on and around campus, including in a dormitory elevator). Student B made six additional reports that Students C and D continued to harass her on January 30, February 1, February 2, February 6, February 7, and February 8, 2012. The VPSA met with Student C, one of the accused students, on January 27, 2012, prior to the second report of harassment, but never met with Students B, the complainant, or D, the second accused student. Further, the VPSA did not follow up with Student C when Student B filed additional reports alleging he continued to harass her. The VPSA stated that he was unable to meet with Student D because of Student D’s “work schedule” and so instead asked Student C to instruct Student D that their actions towards Student B “could be viewed as sexual harassment.”

The SWUAC held a hearing regarding Student B’s reports on February 7, 2012. The University did not provide interim services to Student B between the time of her first report on January 15, 2012, and the February 7, 2012 hearing regarding Students C and D’s conduct. Students C and D were notified in writing of the scheduled hearing date but did not attend the hearing. The SWUAC imposed the following sanctions: (1) barred Students C and D from Student B’s dormitory; and (2) barred them from contact with Student B. In addition, the SWUAC informed Students C and D that further violations would result in immediate expulsion from the University. On February 7, 2012, the University issued its written determinations to Students C

and D. After Student B's February 8, 2012 report that Students C and D continued to harass her, the VPSA notified them by letter dated February 8, 2012, that they had been expelled. The letter also included a "no trespass" order that barred Students C and D from campus. However, the University did not provide written notice to Student B summarizing the result of the hearing or the VPSA's decision to expel Students C and D.

Students C and D did not submit a written appeal. However, two days after Students C and D were expelled, the VPSA notified them in writing, but did not provide Student B with written notification, that the University would reconvene the SWUAC and provide them with a new hearing, which was held on February 13, 2012. The VPSA told OCR that the University's former President believed that the University should grant Students C and D a rehearing because they had not participated in the original hearing and because the consequence (expulsion) was so serious. The VPSA also told OCR that Student B was notified of the rehearing informally and that she attended the rehearing. After the rehearing, the SWUAC did not make a determination as to whether Students C and D violated University policy or sexually harassed Student B. The SWUAC revoked Students C and D's expulsion and modified the sanctions to include no contact with Student B and barred them from Student B's dormitory. The SWUAC notified Students C and D of the decision in writing and their right to appeal the determination. The University verbally advised Student B of the revised determination, but did not give Student B the written determination provided to the other parties or advise her of any right to appeal the SWUAC's decision.

Students C and D appealed to the SRC, which heard their appeal on February 24, 2012. University witnesses could not describe the manner in which the appeal was heard and the University did not provide any documentation that Student B was informed of the appeal or allowed to participate in it. The SRC notified Students C and D on February 29, 2012, that it eliminated the sanction restricting their ability to enter Student B's dormitory but left in place the no contact order. The SRC also suggested that Students B, C and D meet for mediation. According to the University, mediation did not occur. The SRC did not provide notice to Student B of its determination.

Student B stated to OCR that she believed that the University had swept her allegations "under the rug," but did not respond to OCR's further efforts to contact her regarding the effects of Student C and D's harassment as well as the University's responses to her six reports. In addition, there was no indication in the documentation provided by the University, that Student C or D harassed Student B after the SRC completed its review of the appeal.

### Conclusion

The University did not promptly and equitably respond to Student B's reports that Students C and D sexually harassed her in January and February 2012.

Student B initially reported Students C and D's alleged harassment to the University on January 15, 2012. She made six additional reports that Students C and D continued to harass her. Despite Student B's numerous reports of Students C and D's alleged harassment, the University took no interim measures to protect Student B from Students C and D's sexual and retaliatory harassment nor did it offer her resources or support to remedy the effects of their alleged harassment before the University held a hearing and made its determination.

In addition, the University deviated from its grievance policies and granted Students C and D a second hearing, after they failed to attend the initial hearing, because the former President believed the sanction they received (expulsion) was too severe. Students C and D had not filed a written appeal and Student B received no formal notice of the second hearing.

Moreover, Student B received no written notice of the outcome of the initial hearing, the second hearing, Students C and D's appeal of the second hearing, or the outcome of Students C and D's appeal of the second hearing.

Finally, the University did not provide an equitable process to Students C and D. There was no evidence in the file that the University attempted to interview Student D at a time that did not conflict with his work schedule or later interviewed Students C and D after Student B reported further incidents of harassment. The University imposed expulsion on both students without having conducted an investigation that included an opportunity to hear Student D's account of events.

#### *Reports Filed After May 1, 2014, the effective date of the Title IX Policy*

The University provided files of seven reports of sexual harassment and two reports of sexual assault that occurred during the 2014-15 academic year. While these files, received after the University had named a Title IX Coordinator and launched the Title IX webpage, contain more information than the files related to previous reports of sexual harassment or sexual assault, the files nonetheless were often unclear or incomplete. Most notably, only one of the files included notice to the complainant and accused student of the outcome of the investigation. In addition, the files did not always contain information about whether the University conducted a hearing or relied on a determination made by the investigator.

#### *Fall 2014 reports*

During the fall 2014 semester, the University received three reports of sexual harassment. The University responded promptly to each of these reports.

First, the University responded within 4 days to a complaint reported on October 23, 2014, that three unknown persons were requesting XXX photographs and creating fake XXX profiles with the complainant's contact information. OCR determined that the Title IX team's response was not only prompt, but also equitable in that staff utilized the University's Information Technology personnel to coordinate with MPD in an attempt to locate the alleged harassers, each of whom the University concluded was likely not a student based on the social media user-names provided by the complainant. Nevertheless, the University provided the complainant with counseling, escort services, academic assistance, and assistance contacting the MPD.

The University also addressed a report of harassment (October 28, 2014) of a female assistant coach by the team's male head coach. The assistant coach's written report, which she submitted on the "Formal Sexual Misconduct Reporting Form," described her feelings of alienation, rejection, and humiliation by the head coach, as well as his belittling remarks (calling her a "wimp" and telling her to "shut [her] mouth, give [her] opinion and then be quiet," etc.). The University's Title IX Coordinator and a Title IX investigator interviewed each party and all other assistant coaches on the team before determining that although there were "communication and perception problems," the asserted comments did not have "any basis in sexual discrimination." The University conducted a prompt investigation, which it concluded on December 9, 2014. However, the University did not provide the parties with written notice of its determination.

In the third report of sexual harassment (October 26, 2014), the accused acknowledged to the University making inappropriate, sexual comments to a female student, and also acknowledged asking for the phone number of a female resident assistant (also a student), and subsequently graphically described the murder of a woman in a "XXX that he was writing" to another female resident assistant, who was a student (collectively, the complainants). The Director of Residential Life promptly advised the Title IX Coordinator of the complaint but did not refer the matter to the Title IX team for handling. The Director promptly, within four days, obtained an informal resolution after speaking with the accused student, who promised not to make further comments of this type. The Director also gave the accused student an oral warning; however there is no indication in the file whether any of the complainants were notified of the outcome, provided information on available resources, or informed of the right to appeal the sanction. The Director also advised the Title IX Coordinator of the informal resolution. The University's response was, however, inequitable, as OCR could not determine from the documentation whether the complainants agreed to participate in an informal resolution of their complaints, were given an opportunity to participate in that process, or provided information about available resources as well as the University's determination.

### *Spring 2015 reports*

During the spring 2015 semester, the University received two reports of rape and four reports of sexual harassment. OCR notes that a single incident of rape can create a hostile environment for

the affected student. The complainants in the reports below did not identify the accused individuals (one of whom was a student) and no disciplinary actions or remedial measures were taken by the University.

### *Reports of rape*

In one of the reports of rape (reported on January 25, 2015), Campus Security referred to the Title IX Coordinator a report that a non-student raped a female student in her dorm room during a date. In that case, the University and MPD coordinated efforts to identify the suspect whose last name was unknown to the complainant but whom the University subsequently identified. The University provided the student with interim measures, including granting her request to change dorm rooms, providing her with a referral to the University Counselor, and providing a full tuition and expenses refund after the student, three days after reporting the rape, left the University and returned home. There is no documentation showing that the University remained in contact with the student after she withdrew, or offered to assist her should she choose to resume her studies. In addition, the University did not determine whether the student was subjected to a hostile environment. Further, there was no evidence that the University assessed what actions, if any, were necessary to ensure a safe and nondiscriminatory environment for all students.

In the other rape report (reported on April 7, 2015), MPD notified the Title IX Coordinator of a report that a male student allegedly sexually assaulted a female student in her dorm room. One of the University's Deputy Title IX Coordinators reached out to the student and provided information about the University's Title IX procedures and interim measures, including housing and academic assistance and counseling. The student requested and the University provided academic assistance and counseling during the spring 2015 semester. The student declined to identify the student who sexually assaulted her or support an investigation by the University; however, the University had the accused student's first name, which was included in the MPD report it received, and could have attempted to identify him through other means, such as by reviewing video footage and visitor logs from the student's dorm.

Although the University responded to the report of an alleged sexual assault in fewer than thirty days and provided the student with resources to address her immediate needs, the file does not reflect that the University attempted to learn the identity of the accused. Additionally, the University did not provide documentation indicating that the Title IX Coordinator assessed whether the University could honor the student's request not to proceed with an investigation while still providing a safe and nondiscriminatory environment for all students, including the student who was allegedly sexually assaulted. In addition, there was no evidence that the University determined whether the student or the broader community were subjected to a hostile environment or assessed whether broader remedies were necessary to provide a safe and nondiscriminatory environment for all students.

- Sexual harassment reports

The University investigated four reports of sexual harassment (reported on January 14, 2015, January 26, 2015, February 2, 2015, and February 26, 2015); it did not convene a hearing under the University's Student Conduct Policy or make a determination that no hearing was needed in any of them.

In the January 14, 2015 report, after a professor reported to the Title IX team that a male student in his class was stalking and had previously sent unwanted messages through social media to a female student in his class, two of the University's Deputy Title IX Coordinators interviewed the professor, the female student (the complainant), and the male student (the accused), and without holding a hearing, determined that there was insufficient evidence the accused student violated University policy. The University promptly responded to the report and concluded its investigation in less than one month, at which time it instructed the accused student to avoid the complainant's place of employment and arranged the students' schedules so they would not be in the class (which had a flexible schedule) at the same time. The University's response was equitable to the extent that the Deputy Title IX Coordinator's report summarizing the investigation noted that counseling and academic support could be arranged for either student, but OCR was unable to determine from the file whether either student was informed verbally or in writing of this outcome. Additionally, the University's response was inequitable as the Title IX team failed to provide written notice of the outcome of its investigation to either student.

The January 26, 2015 report was first made by several female students (the complainants) who alleged that a male student (the accused) in the XXX program on multiple occasions was observed masturbating in class. The students first reported the accused student's behavior to their instructor, who reported it to the department head who reported it to the department chair. Together the two administrators met with the accused student, who denied the behavior; the administrators did not meet with the complainants to obtain their account of the allegation. A second report about the same student was raised by the XXX program director, who heard of the incident from an instructor and contacted a Deputy Title IX Coordinator. The Deputy Title IX Coordinator encouraged the program director to submit a formal sexual misconduct reporting form, which she did on February 2, 2015. The department head and the department chair then also submitted a formal sexual misconduct reporting form about the accused student's behavior.

Upon receipt of the formal reports, two investigators on the Title IX team conducted an investigation in which they interviewed the three complainants and the accused student, the instructor, and the department head and chair, who were involved in responding to the first report, as well as the program director who brought the matter to the attention of the Title IX team. The Title IX investigators concluded that there was insufficient evidence to find that the accused student violated the University's sexual misconduct policy and noted in the investigative



summary that the complainants “felt that the matter had been dealt with.” On February 24, 2015, thirty days after the instructor received the complainants’ first report, and 23 days after the program director filed a formal sexual misconduct reporting form, the Title IX Coordinator issued written notice to each of the complainants and the accused student stating the University’s findings and providing notice of the appeal process. The students did not appeal. OCR determined that the University’s Title IX team responded promptly after receiving the formal sexual misconduct reporting form(s), and provided written notice of its determination, including information about filing an appeal.

The University also investigated a February 2, 2015 report by a student that a professor created a hostile environment based on sex when the professor, in the context of a class discussion on workplace discrimination, expressed his view that equal opportunity laws do not protect lesbian, gay, bisexual and transgender (LGBT) individuals in the work place, that businesses should not have to deal with LGBT issues, and that “if we keep making things equal, that we will eventually have monkeys in the workplace.” Although the University completed its investigation within nine days and determined that a hostile environment was not created by a single discussion in the context of a graduate level XXX course where the professor acknowledged making comments that may have caused some students to feel “uncomfortable” as part of a pedagogical approach that the professor asserted was intended to provoke thought, stimulate discussion, and, in his view, constituted protected speech, it failed to provide written notice of its determination to the complainant or the accused professor.

In responding to a February 26, 2015 report by a female student who was employed as XXX that a male coach made inappropriate comments about women, including comments about wanting sexual favors from waitresses and sexually inappropriate comments about female athletes, the Title IX team interviewed multiple witnesses in the XXX department, including the female student complainant. The Title IX investigator found insufficient evidence to support the complaint allegation. The University promptly completed its investigation in fewer than 60 days; however, the University’s records do not indicate whether written notice of its determination was provided to the complainant or the accused coach as is required for an equitable outcome.

## **G. Training and Outreach**

### **1. Training of University Employees**

Title IX requires that all persons involved in implementing the Title IX grievance procedures have training or experience in handling complaints alleging discrimination based on sex and in the operation of the University’s grievance procedures. The University needs to ensure that their employees know how to report harassment to appropriate officials and that those officials are trained in how to respond properly.

### *Title IX Investigative Employee Training*

OCR's investigation revealed that the University had not provided training for University officials responsible for handling the University's compliance with Title IX prior to the start of OCR's investigation. The University acknowledged that prior to the initiation of OCR's investigation it provided no Title IX-specific training to employees who investigated allegations of sexual harassment or sexual assault, including the HR Director (who served as the Title IX Coordinator from March 21, 2014 until October 1, 2015), the VPSA, and the Superintendent of Campus Security, and only began to provide such training in November 2014. At that time, six University employees, including the then Title IX Coordinator, two Deputy Title IX Coordinators, and three Title IX investigators, attended a two-day training for Title IX investigators. The training included general information about Title IX, methods of investigation, the standard of proof, interview techniques, evidence collection, hearing procedures, remedies, appeal procedures, and the prohibition against retaliation.

In addition, beginning on February 3, 2015, the six employees who attended the November 2014 training and the VPSA, the Interim Superintendent of Campus Security, the Counselor, and the Director of Student Housing attended a two-day training titled "The Integrated and Coordinated Approach to Sexual Misconduct: Understanding the Intersection of Title IX, the Clery Act, and the Violence Against Women Act." The training included general information about Title IX and its regulatory framework, Title IX Coordinator responsibilities, University Title IX responsibilities, and investigative techniques (including information about privacy and retaliation considerations, interviewing techniques, credibility determinations, consent, the role of alcohol in sexual assault, evidentiary considerations in sexual harassment or sexual assault hearings, and coordination with law enforcement).

On December 5-6, 2015, the University's new Title IX Coordinator and a Deputy Title IX Coordinator attended a training titled "Title IX Compliance Institute: Advanced Workshop," that included discussion of recent OCR letters of finding and resolution agreements.

### *Responsible Employee Training*

The University reported that all full-time faculty and staff attended an October 13, 2013 training titled "Preventing Harassment." The University did not provide a narrative description of the training or any training materials.

Beginning in the 2014-15 academic year, one of the University's Deputy Title IX Coordinators provided Title IX training to students who worked as resident advisors in the University residence halls. The training provided a brief overview of Title IX and instruction regarding the obligations of responsible employees to report incidents of sexual harassment or sexual assault to

the Title IX team. The training included information about how to talk to persons who report incidents of sexual harassment or sexual assault and University and community services available to persons who experience sexual harassment or sexual assault.

Additionally, during the fall of 2015, the University's Title IX Coordinator and a Deputy Title IX Coordinator conducted Title IX-specific training, including information about the University's reporting requirements for responsible employees and campus resources, for new faculty, resident advisors, the Student Affairs Team, and student wellness employees.

The University did not provide any information that it provided additional training to campus security officers, faculty, or staff, other than those mentioned above, before or after OCR initiated this investigation.

Based on the above, OCR determined that prior to the initiation of this complaint, the University failed to meet its obligation to ensure that all persons involved in handling sexual harassment and sexual assault complaints were trained and had experience to respond appropriately to Title IX reports. Since then, the University has provided training to the Title IX Coordinator and Deputy Title IX Coordinators, to ensure that they know how to handle sexual harassment and sexual assault complaints. They have been trained on how to interview persons subjected to sexual violence, the proper standard of review, and the need for an appropriate institutional response to reports of sexual harassment and sexual assault. However, OCR's review of the cases did not establish that in every instance the trained members of the Title IX team responded equitably to reports brought to their attention, suggesting that the training has not been completely effective. In addition, the Chair of the SWUAC acknowledged that neither he nor other members of the SWUAC had received training on how to adjudicate allegations of sexual harassment and sexual assault. Further, the SWUAC has student members, which OCR strongly discourages.<sup>20</sup> OCR will monitor the participation of students on the SWUAC and SRC. The Chair informed OCR that he had been chair since 2011 and that his day-to-day job responsibilities were wholly unrelated to Title IX and in fact focused on creating dining plans, working with food vendors, issuing ID cards to students, organizing homecoming festivities, advising student associations, and supervising Student Center custodial staff.

OCR also determined that the University's training for staff who are responsible employees, both before and after the initiation of this complaint, is insufficient to ensure that all University employees are familiar with the University's policies prohibiting sexual harassment and sexual assault in that it has not trained all responsible employees, including security officers and faculty other than those newly hired. Although the files reviewed by OCR during this investigation suggest that some improvement has been made, as responsible employees increasingly refer reports of possible sexual harassment and sexual assault to members of the University's Title IX

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<sup>20</sup>The Student Rights Committee also has student members, which OCR strongly discourages.

team, the lack of on-going, effective training for responsible employees raises a concern for OCR that additional and more effective training must be provided to ensure that the University can provide prompt and equitable responses to all possible instances of sexual harassment or sexual assault of which it knew or should have known.

## *2. Student Training and Outreach*

In the spring 2013, the University initiated mandatory training for new and transfer students titled “CONNECT,” which was funded through a Campus Grant to Reduce Sexual Assault, Domestic Violence, Dating Violence and Stalking that it received in 2012. The CONNECT training included information about the University’s definitions of sexual harassment and sexual assault, the University’s Title IX Coordinators, other University resources (particularly the Student Health and Development Center and counselors), how to report incidents of sexual harassment or sexual assault, the manner in which the University responds to and investigates reports of sexual harassment or sexual assault, and community resources for persons who experience sexual harassment or sexual assault.

In addition, the University initiated the “Keep U Safe” program, designed to “foster a safe and inclusive campus community.” The University conducts outreach through the Keep U Safe program, including presentations to the University community and the creation of a web page with information about sexual harassment and sexual assault. The web page contains an overview of the University’s Title IX Policies and nondiscrimination statement, contact information for the University’s current Title IX Coordinators and other University and community resources for individuals who experience sexual harassment or sexual assault, definitions and examples of types of sexual harassment or sexual assault that individuals experience, links to the University’s online complaint form, and educational information about sexual harassment and sexual assault (e.g., “myths and facts,” suggestions for steps to stop or address sexual harassment and sexual assault (either as a bystander or an individual experiencing it)).

In addition, student clubs and organizations sponsor activities that provide information about sexual harassment and sexual assault, including information about definitions of sexual assault and consent, best practices for safety and self-defense, and resources available for individuals who experience sexual harassment or sexual assault. These activities included an MPD and DVCC program titled “It Was Rape,” activities during Sexual Assault Awareness month (April) conducted by student groups, and “Take Back the Night” initiatives.

OCR notes that the University provides one-time training for new and transfer students on Title IX, including sexual harassment and sexual assault that aims to educate students on the types of conduct that are prohibited under the University’s policies, how to report sexual harassment and sexual assault, and who at the University is charged with responding to student reports.

Additionally, through the “Keep U Safe” program, the University offers periodic outreach and educational programs to members of the University community regarding its Title IX policies and sexual harassment and sexual assault, generally. OCR attempted (through focus groups) to obtain information from students to determine the effectiveness and adequacy of the University’s training but was unable to do so.

## **ANALYSIS**

### **A. Notice of Nondiscrimination**

Based on the evidence obtained, OCR determined that the University’s notice of nondiscrimination violates Title IX. The University posted a nondiscrimination notice on its Title IX webpage, but not the University’s main web page.<sup>21</sup> Further, neither the University’s Student Handbook nor its Admissions webpage contains a nondiscrimination statement.<sup>22</sup>

The University’s notice of nondiscrimination does not meet the Title IX requirements, at 34 C.F.R. § 106.9, in that the University’s notice of nondiscrimination does not extend to applicants. Moreover, the name and contact information for the University’s Title IX Coordinator and notice that inquiries to recipients regarding Title IX and its implementing regulation may be referred to the Title IX Coordinator or to OCR are not located on the same subpage as the notice of nondiscrimination.

### **B. Designation of a Title IX Coordinator**

During the course of the investigation, the University corrected a Title IX violation regarding the designation of a Title IX Coordinator.

When OCR initiated its investigation on February 26, 2014, the University had no designated Title IX Coordinator. On March 21, 2014, the University named its HR Director as the Title IX Coordinator, who served until October 1, 2015.

On October 1, 2015, the University appointed a Title IX Coordinator whose core responsibilities include overseeing the University’s response to Title IX reports and complaints and identifying and addressing any patterns or systemic problems revealed by such reports and complaints and who has knowledge of all the complaints raising Title IX issues throughout the University, the requirements of Title IX, and the University’s own policies and procedures on sex discrimination. The Title IX Coordinator and several, but not all, Deputy Coordinators have received four days of Title IX-specific training from qualified external providers.

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<sup>21</sup> <http://www.minotstateu.edu/keepusafe/overview.shtml>; <http://www.minotstateu.edu/>

<sup>22</sup> [http://www.minotstateu.edu/student\\_handbook.pdf](http://www.minotstateu.edu/student_handbook.pdf); <http://www.minotstateu.edu/enroll/apply.shtml>

The Title IX Coordinator is charged with overseeing all matters related to sex discrimination against students and employees. In addition, the University has appointed Deputy Coordinators to assist the Title IX Coordinator “with specialized areas and in the oversight of Title IX matters,” including the development of policies and procedures, the development of training and orientation materials for students and employees, the oversight of investigations of complaints of sexual harassment and sexual assault and other forms of sex discrimination, the review of complaints to identify patterns or systemic problems, the protection and safety of those reporting violations, and compliance with the University’s obligations under the Clery Act.

**C. Adoption and Implementation of Sexual Harassment or Sexual Assault Policies and Procedures (34 C.F.R. §§ 106.8(b) and 106.9(a))**

Based on its investigation, OCR determined that the University’s established policies and procedures as written and as applied violate Title IX.

*Former Policies, Procedures and Practices*

The University’s Policies, though widely distributed in the Student Handbook and published online, were not easily understood and, individually and collectively, were noncompliant with Title IX in significant ways. As described above, the University’s Policies do not clearly identify the individuals within the University to whom reports of sexual harassment and sexual assault should be made. The Policies further fail to explain who within the University will conduct investigations into such reports, and the procedures that will be followed in resolving them.

Further, the Policies did not make clear that they applied to alleged discrimination or sexual harassment or sexual assault carried out by employees or third parties or that the University will process all complaints of sexual harassment and sexual assault regardless of where the conduct occurred to determine whether the conduct occurred in the context of an educational program or had continuing effects on campus. The Policies did not set forth the manner in which reports of sexual harassment and sexual assault could be made – identifying numerous on campus and off campus offices or agencies to which a student could report alleged sexual harassment or sexual assault. Although the Policy on Sexual Assault indicated that the VPSA would initiate an investigation, the Policies did not contain designated and reasonably prompt timeframes for the major stages of the process. In addition, HR Policy 1.1 allows the HR Director broad discretion to extend the investigation of reports of sexual harassment to 120 days in “particular difficulties or unforeseen circumstances,” and authorizes the disciplining administrator to disagree with recommended discipline without providing criteria or standards to guide such a determination. None of the policies required the University to provide periodic updates to complainants about the status of the University’s response to the complaint. Further, although the Policy on Sexual Assault identified several types of interim measures that the VPSA should provide to the

complainant, the Policy on Harassment and the Student Complaint and Student Conduct Policy do not identify and require the provision of interim measures, as appropriate. The Student Conduct Policy provides the parties the opportunity during hearings to question anyone who presents information, without providing process protections to ensure fair process for all parties. Further, the VPSA stated that he allows parties to ask questions about past sexual history if “relevant” to the case, which is only permitted when the questions relate to past sexual history with the respondent, a limitation the VPSA did not acknowledge. Additionally such provisions may pose a barrier to or discourage reporting and proceeding with sexual harassment or sexual assault complaints. The Policies also did not provide written notice of the range of potential remedies and sanctions. Finally, the Policies did not state that the University will take steps to prevent the recurrence of sexual harassment and sexual assault or remedy its effects and did not provide any protection from retaliation.

OCR considered whether the University applied its Policies properly, by examining its handling of the reports of sexual harassment and sexual assault that it received while the Policies were in effect. Between January 1, 2011, and the initiation of this investigation in February 2014, the University received five reports of sexual harassment or sexual assault, including Student A’s report. The University completed an investigation pursuant to its policies and procedures in only one of five reports, thus failing to comply with the Title IX requirement that it take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from recurring.

In addition, the University did not provide Student A or Student B (nor any of the other students who made reports in this time period) with any interim measures, such as counseling, academic assistance, housing assistance, or appropriate, timely no contact orders; these failures violate Title IX.

Finally, the University provided none of the affected students during this period with written notice of a determination in their cases. This failure also violates Title IX.

### *iii. Current Policies, Procedures and Practices*

The University’s Policy on Sexual Assault, Policy on Harassment, and Student Conduct Policy remain unchanged. However, the University has created the Title IX Policy, which is widely disseminated on its website, but not available in the Student Handbook.

The Title IX Policy clarifies the way in which students should report allegations of sexual harassment or sexual assault, containing a link to a complaint form and a detailed explanation of the manner in which the University will respond to a complaint, including a statement that it will provide regular updates to complainants about the status of its response to the complaint. The

Title IX Policy also provides a more thorough description of the interim measures available to complainants; however the Title IX Policy does not describe interim measures that are made available to respondents. In addition, the Title IX Policy makes clear that the University will take steps to stop the harassment, prevent its recurrence, and remedy any discriminatory effects of the harassment. The Title IX Policy also contains definitions of terms, such as consent, coercion, intimidation, responsible employees, retaliation, sexual acts, sexual assault, sexual discrimination, sexual exploitation, sexual harassment, and sexual misconduct.

Significantly, the Title IX Policy does not contain designated and reasonably prompt time frames for major stages of the grievance process. The Title IX Policy also does not make clear that it applies to conduct committed by third parties or that the University will process all complaints of sexual harassment and sexual assault regardless of where the conduct occurred (on-campus and off-campus) to determine whether the conduct occurred in the context of an educational program or had continuing effects on campus. Finally, although the Title IX Policy defines retaliation, it did not originally expressly prohibit retaliation; however, the revised Title IX Policy does expressly prohibit retaliation.

The Title IX Policy's provision for informal resolution fails to provide an equitable process to accused students because the policy allows for the imposition of a penalty on an accused student when the University has not conducted an independent investigation and has no basis for determining whether a penalty is warranted and, if so, how significant the penalty should be.

Further, the University's policies are confusing. The Policy on Sexual Assault, the Policy on Harassment, the Student Conduct Policy, and HR Policy 1.1 are published online and (with the exception of HR Policy 1.1) in the Student Handbook. However, the Title IX policy is not contained in the Student Handbook. As noted above, the policies, collectively, are inconsistent with each other in the way in which the reporting, investigatory, and hearing processes are described.

OCR determined that in applying its policies, the University has not promptly and equitably responded to allegations of sexual harassment and sexual assault about which it had notice. Specifically, although the University conducted investigations into the 2014-15 reports of sexual harassment or sexual assault of which it had notice, it issued written notice of its findings in only one instance out of nine. In addition, although the Title IX Policy explains that formal reports of sexual harassment or sexual assault will be resolved through the procedures set forth in the Student Conduct Policy or H.R. Policy 1.1 depending on whether the person who carried out the alleged sexual harassment or sexual assault is a student or an employee, the University did not utilize procedures consistent with the procedures set forth in the Student Conduct Policy in response to any of the 2014-15 reports of which it had notice. Instead, the University relied upon the recommendation of its Title IX investigator.



However, the University has offered and provided interim services, including counseling, housing assistance, academic assistance, tuition waivers, and no-contact orders to students (and non-students) who reported sexual harassment or sexual assault during the 2014-15 academic year. In addition, the University consistently applied the preponderance of the evidence standard in reaching determinations regarding allegations of sexual harassment and sexual assault during the 2014-15 academic year. Finally, although the Title IX Policy does not specify that it applies to conduct by third parties or that the University will process all complaints of sexual harassment and sexual assault regardless of where the conduct occurred to determine whether the conduct created a hostile environment on campus, OCR's file review revealed that, after OCR initiated this investigation, the University did investigate conduct by third parties and processed all complaints of sexual harassment and sexual assault regardless of where the conduct occurred.

#### **D. Response to sexual harassment or sexual assault complaints**

Based on the evidence obtained, OCR determined that the University's responses to complaints of sexual harassment and sexual assault did not comply with the requirements of Title IX. OCR further determined that the University designated staff to handle its responses to such complaints who were not adequately trained to respond appropriately to reports of sexual harassment and sexual assault.

##### *i. Student A's Complaint*

As set forth above, the University did not promptly and equitably respond to Student A's report that Professor A sexually harassed and sexually assaulted her between June 2010 and May 2012, when she graduated from the University. After it received notice of Student A's complaint, the University did not issue a no-contact order or offer Student A counseling services or any other interim services. Finally, the University did not adjudicate Student A's allegation utilizing hearing procedures pursuant to University policies and did not issue a written notice of its findings to Student A or Professor A.

Thus, the University did not provide a prompt and equitable response to Student A's report in that it did not provide written notice of the complaint to the respondent, did not complete an investigation of the complaint, did not provide interim services, did not determine whether Student A or the broader University community were subjected to a hostile environment as a result of the reported conduct, and did not provide written notice of its findings to Student A or Professor A. The University's failure to offer interim services and its delayed and incomplete response to her report could have created a hostile environment for Student A. As noted below, the Resolution Agreement includes a provision requiring the University to offer appropriate services to remedy the effects of the University's inaction.

*ii. Student B's Complaint*

Based on the evidence in the file, OCR determined that the University's response to Student B's report was prompt, in that it held a hearing 24 days after receiving Student B's first report of sexual harassment, but not equitable because, despite Student B's six reports of sexual harassment by Students C and D, the University took no interim measures to protect Student B from Students' C and D's on-going sexual and retaliatory harassment, failed to offer to provide Student B with resources to address the effects of their on-going harassment until a hearing was held, failed to provide Student B with an equal opportunity to participate in the University's hearing and subsequently failed to provide her with written notice of the University's determination, her appeal rights, or information about the second hearing in this case. Although the University initially determined that Student B was subjected to a hostile environment and on-going harassment, expelling Students C and D, it ultimately reversed its determination despite the lack of an appeal by Students C and D, and failed to provide Student B with notice of the subsequent hearing and appeal, neither of which were convened or addressed consistent with the University's Policies. The University's delay in issuing and enforcing an appropriate no-contact order could have contributed to the continuation of a hostile environment for Student B in that the sexual harassment continued from the date of her report (January 15, 2012) until February 8, 2012.

Further, the University did not provide an equitable process to Students C and D. The University did not attempt to interview Student D at a time when he was not working. Further, there was no documentation evidencing that the University interviewed Students C and D after Student B reported additional incidents of harassment. The University imposed expulsion on both students without having conducted an investigation that included an opportunity to hear Student D's account of events.

*iii. Reports Filed Prior to the Implementation of the Title IX Policy*

The University did not promptly and equitably respond to additional reports of sexual harassment and sexual assault prior to OCR's investigation and the University's implementation of the Title IX Policy.

The University received three additional reports of sexual harassment or sexual assault in the three years prior to receiving notice of OCR's investigation, and before it implemented the Title IX Policy. In each instance, the University received a student incident or security incident report. OCR found that the University's failure to coordinate with its law enforcement personnel led to Title IX violations because only one of four complaints of sexual harassment reported to campus security offices actually led to a Title IX investigation. In addition, the University did not provide interim measures to the complaining students, did not conduct a hearing pursuant to the University's procedures regarding the incidents, and did not provide the complaining students

with written notice of its findings.

In sum, prior to implementing the Title IX Policy, the University did not provide a prompt response to incidents of sexual harassment or sexual assault about which it had notice, did not provide interim measures to harassed or accused students, did not investigate or otherwise determine what occurred in three cases it received prior to OCR's notice of investigation, and did not provide written notice of its findings to any complaining students.

*iv. Reports Filed After the Implementation of the Title IX Policy*

The University did not promptly and equitably respond to reports of sexual harassment and sexual assault after it adopted the Title IX Policy.

The University received nine reports of sexual harassment or sexual assault during the 2014-15 academic year. Although the University investigated each incident and consistently provided interim measures to complaining students, the University did not comply with Title IX when it did not provide written notice of the outcome of its investigation to one or both of the complaining or accused students in eight of these nine cases.

In addition, OCR noted that the University did not follow its own policies and procedures in that it did not utilize procedures consistent with its Student Conduct Policy, which states that the VPSA will determine whether to provide hearings for Title IX complaints. The University instead relied on the determination of a Title IX investigator. Although the Title IX regulations do not require the University to provide a hearing to resolve reports of sexual harassment or sexual assault, the University's consistent deviation from its own policies and procedures raises a concern that it does not accurately describe to potential complainants the process that it in fact provides to students who report incidents of sexual harassment or sexual assault.

Finally, OCR found that in two instances where the complainant did not wish for the University to pursue an investigation, one of which involved an alleged rape by another student in a University dorm room, the University failed to consider whether the complainant's request could be honored while still providing a safe and nondiscriminatory environment for all students.

## **CONCLUSION**

OCR found that at the outset of the investigation, the University had not designated a Title IX Coordinator and that its sexual harassment or sexual assault policies and procedures did not comply with Title IX. Although the University has since designated and adequately trained a Title IX Coordinator, its sexual harassment or sexual assault policies and procedures remain in violation of Title IX. Further, OCR determined that the University violated Title IX when it did not promptly and equitably respond to reports of sexual harassment and sexual assault that it

received, including by failing to determine whether the complainants were subjected to a hostile environment. The University did not adjudicate an allegation of sexual harassment or sexual assault utilizing hearing procedures pursuant to University Policies, and did not issue a written notice of its findings to Student A. In addition, the University consistently failed to provide written notice of its findings to students who reported sexual harassment or sexual assault.

To resolve the complaint allegation and the above-described Title IX compliance determinations, the University agreed to enter into a resolution agreement (the Agreement) with OCR on June 24, 2016. Under the Agreement, the University agreed to take the following specific actions to address the violations of Title IX and ensure that it does not discriminate based on sex in the future:

- Retain an equity consultant with expertise in all areas of compliance with Title IX, who will work with designated University employees with expertise in Title IX and the prevention of sexual harassment and sexual assault on college campuses and training in higher education.
- Issue a statement to the University community, including students, parents, administrators and staff, that it does not tolerate sexual harassment and sexual assault, encouraging any student who believes he or she has been subjected to sexual harassment or sexual assault to report the incident(s) to the University, and informing the community how to report the incident.
- Review and revise its sexual harassment and sexual assault policies and procedures and its code of conduct, including its notice of nondiscrimination and grievance procedures, to ensure that they adequately address incidents of sexual harassment or sexual assault and provide for the prompt and equitable resolution of sexual harassment and sexual assault complaints.
- Provide effective training to staff, including Title IX Coordinators and investigators, security officers, athletic coaches, residence and housing staff, administrators, faculty, and other staff, on the University's revised sexual harassment and sexual assault policies and procedures and provide investigation training to staff who are directly involved in handling complaints or other reports of sexual harassment and sexual assault.
- Conduct an assessment to determine whether it has sufficient staff to investigate and address Title IX complaints in a timely manner and add staff as needed to avoid delays in the investigative and appeals process.
- Provide annual training on topics related to sexual harassment and sexual assault to all students.

- Develop a procedure to document each incident or complaint (formal or informal) of discrimination on the basis of sex (including sexual harassment and sexual assault) received by the University and maintain documents relating to reports of sexual harassment and sexual assault.
- Develop a monitoring program to assess the effectiveness of the University's overall Title IX anti-discrimination efforts.
- Periodically review the Memorandum of Understanding with the Minot Police Department to improve communication and coordination regarding reports of sexual harassment and sexual assault and develop a written protocol that outlines how the Title IX Coordinator and the police department will notify each other about such reports.
- Create a committee that includes a wide cross section of the University community to identify strategies for ensuring that students understand their rights under Title IX, and how to report possible violations of Title IX, including complaints of sexual harassment and sexual assault.
- Conduct periodic climate checks to assess the effectiveness of steps taken pursuant to this Agreement, or otherwise by the University, to provide for a campus free of sexual harassment and sexual assault.
- Review prior reports of sexual harassment and sexual assault, including Students A and B's reports, to determine whether the University investigated each complaint or report promptly and equitably, and take appropriate action to address any problems it identifies regarding how these complaints were handled.

OCR will monitor the University's implementation of the Agreement until the University is in compliance with the statutes and regulations at issue in this case. The full and effective implementation of the Agreement will address all of OCR's Title IX compliance findings. OCR received an initial monitoring report from the University on June 28, 2016, and anticipates receiving additional reports. If the University fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings to enforce the Resolution Agreement, OCR will give the University written notice of the alleged breach and sixty (60) calendar days to cure the breach.

This concludes OCR's investigation of the complaint and should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR

case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint alleging such treatment. The Complainant may also file a private suit in federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We wish to thank you for the cooperation extended to OCR during our investigation. In particular, we thank you, the University's attorney, Noah Brisbin, and staff for their assistance throughout OCR's investigation. If you have any questions, please do not hesitate to contact Aleeza Strubel, Supervisory Attorney at 312-730-1613, or by e-mail at [Aleeza.Strubel@ed.gov](mailto:Aleeza.Strubel@ed.gov).

Sincerely,

/s/

Adele Rapport  
Regional Director